THE WORLD COURT

BY

AMOS J. PEASLEE

Reprinted from The New York Times
February 5, 1922

Digitized by the Internet Archive
in 2015

https://archive.org/details/worldcourt00peas

THE WORLD COURT

By Amos J. Peaslee

Mr. Peaslee, while associated with the American Peace Commission at Paris, submitted recommendations with regard to a world court under the League of Nations. He is a member of the law firm of Peaslee and Compton of New York City.

If the Permanent Court of International Justice, which opened at The Hague on January 30, 1922, fulfills the hopes which are held for it, it will be forever a monument to Elihu Root, John Bassett Moore and James Brown Scott, three of America's foremost international jurists, who have led in the efforts of the last quarter of a century to establish a World Court based upon American ideals of constitutional government and the American conception of the supreme importance of justice and judicial institutions.

I.

The Championship by America of the Ideals of Justice and Judicial Institutions.

From the time of the Peace of Westphalia, in 1648, and with the writings of Hugo Grotius, a new school of international thought has been developing. The importance of individual freedom, of democratic institutions of government, of constitutional liberty, of justice and fair play among men and among the Governments which they create, have become the dominant motives of advanced political theories.

The French writers of the late eighteenth century were great exponents of these ideals, and the people of our thirteen Colonies founded the United States of America as one of the first practical experiments in their application.

What is the essence of the theory of government as we hold it in the United States? It is (1) that the people of the United States are the supreme sovereign power; (2) that their representatives in Congress and other legislative bodies and their President, their Governors and all other Government officials are their servants and not their lords and masters; (3) that by supreme declarations in the form of the Constitution of the United States and the constitutions of the States, the people have defined the powers and the duties of their political servants and have reserved to themselves certain fundamental rights and liberties which cannot be infringed; and (4) that if their political servants do attempt to

infringe those rights, any citizen who suffers thereby may apply to the courts of the nation and finally to the Supreme Court of the United States, and, though he may be the poorest and lowliest person in the most remote town, he may have the entire action of the Congress of the United States, of the President, or of a dozen States, if necessary, set aside and rendered null and void.

American Cornerstones of Government.

The cornerstones of governmental institutions, therefore, according to American ideals, are (1) a Bill of Rights declaring and reserving the rights of the people and of the federated states, nations, or other units, and (2) a Judicial System for the protection of those rights. In modern society the rights of individuals and of separate nations must always be circumscribed by the rights of the people as a whole. The legislative and executive departments of government are highly important as instruments for expressing and carrying out the will of the people, but the courts and the judicial system stand as the bulwarks to guard against possible usurpation of power.

Nothing is more gratifying to the patriotic American than to study the modern constitutions of the other nations of the world. Sometimes we think of the United States as a young country, and we imagine that we alone cherish ideals of liberty and democracy. What an awakening it is to find that our Constitution is one of the oldest ones now in existence. What a thrill does it give us to read the constitutions of our sister republics of South and Central America and to find written in their supreme declarations of principles of government, phrase after phrase copied almost verbatim from our own Constitution!

We do not claim that our system of government has worked perfectly. Serious miscarriages of justice have sometimes occurred, but we do believe our ideals to be superior to those of any other plan which has yet been tried, and when we contemplate the prestige and the leadership which the American system has achieved; when we recall the oppression which has occurred in other countries under the guise of governmental power; when we contemplate the nations which are staggering bankrupt under a heritage of superofficialism and a superfluity of government, we do well to hold carefully to the protections of liberty, and the restrictions on governmental powers which our American system contains.

II.

Judicial Institutions in International Relations.

The analogy between national governmental institutions and international institutions should not be pressed too far. The difference in the nature of the problems, the traditions of diplomacy and international custom, the theories of sovereignty and equality of States, and the host of complicated issues and historical prejudices between nations, create situations which will always make it necessary to differentiate carefully between them.

We may be certain of one thing, however, that, just as domestic peace within nations is never stable unless there is an adequate system for the realization of justice, so there will be no permanent peace among nations until there is a complete system for realizing not only a state of calm, but also justice among them. The passive ideal of peace—mere peace—whether just or unjust, will never satisfy the aspirations of human nature. Until some satisfactory mechanism is smoothly functioning to which aggrieved parties can apply, when international wrongs are threatened or committed, for a determination and protection of their rights by impartial tribunals on the basis of the facts and the justice of the case, the aggrieved parties and their champions will continue to resort to force in an endeavor to realize justice through the only means that they find available.

At various international conferences in which the United States had participated prior to the Peace Conference at Paris our delegates had been consistently emphasizing the American theory of government and had been endeavoring to open the way for its more universal application.

The Hague Conferences.

The history of the work of the American delegates at The Hague conferences of 1899 and 1907, in their endeavors to establish a permanent court of justice through which could be developed a system of international law, and which could decide controversies upon the basis of the actual right and wrong involved, and not on the basis of diplomatic expediency, is too well known to be repeated here. The American draft plan for a Court of Arbitral Justice presented to The Hague Conference of 1907 contemplated a strictly judicial and permanent court, in which justice and not expediency should reign supreme.

The United States need not be entirely ashamed of the fact that it does not enjoy a reputation for excessive cunning and skill in

the field of diplomacy. It may be justly proud of its championship of the supremacy of the ideal of justice. Although co-operating heartily with the development of arbitration treaties and of actual arbitration under those treaties as a vast improvement upon the settlement of international disputes by force, the United States has always felt that there is a still higher ideal, superior to the methods of diplomacy or the methods of arbitration, and that is the method of judicial settlement through orderly, permanent, impartial courts of justice.

III.

Judicial Institutions Under the Covenant of the League of Nations.

In view of this seasoned policy of the United States and of the tremendous struggles which our delegates at prior international conferences had made to apply the American ideals of Government to international relations, it was indeed something of a shock to observe the treatment of that policy at the conference at Versailles.

The Covenant of the League of Nations was intended to be the greatest constitutional document ever produced. It was to be a Constitution of the World. It was quite unfortunate for its defenders to take any other position. They would have been stronger if they had come forward frankly and said so. The people of the United States knew it. They, of all people, are not afraid of a constitution—not even of a constitution of the world, if that really means a guarantee of the rights and liberties of the nations and the protection of the best interests and the welfare of the people of the world. But before they agree to be bound by any world constitution they are entitled to be certain that it is consistent with the ideals of government which they have cherished and championed for a century and a quarter.

Defects of American Draft.

In the American plan for a League of Nations not only was no reference made to the prior endeavors to establish a world court, but there was no provision for any court whatever. The powers of the League were placed indiscriminately in a legislative body composed of the diplomatic representatives of the different nations and there was not even any clause authorizing the legislative body to create judicial institutions. The historical error was repeated of allotting the function of settling disputes to the legislative body and to an impractical system of arbitration instead of to an impartial judicial organization.

The defects of the American draft were rectified in part before the final completion of the treaty. In the covenant as adopted the following provision appeared as Article XIV:

The Council shall formulate and submit to the members of the League for adoption plans for estabishment of a permanent court of international justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

This article was an improvement over the prospect of not having any judicial system whatever, but it was open to three serious criticisms: (1) that it did not supply the omission of a Bill of Rights in the covenant, (2) that it did not give the world court the dignity of constitutional creation but made it at best the mere creature of the legislative or executive will, and (3) that it gave to any recalcitrant nation against which a just claim might be filed, the constitutional right to oust the court of jurisdiction by claiming the right not to be sued without its consent.

Instead of Article XIV. and the unsatisfactory provisions for arbitration and the settlement of disputes by the legislative body of the League, the covenant should have contained a full Bill of Rights and a brief Judiciary Article somewhat along the following lines:

The judicial power of the League of Nations shall be vested in a court of justice to be called the "world court" and in such inferior courts as the Council and the Assembly may from time to time establish.

The world court shall consist of fifteen justices selected by the Council and the Assembly. They shall hold office during good behavior and shall sit in official session at the seat of the League. Judges exercising the judicial powers of the League shall receive a compensation fixed by the Council and the Assembly and paid as part of the expenses of the League.

The judicial power of the League of Nations extends to all cases :

(*a*) Arising under this constitution or under treaties or other international conventions or agreements;

(*b*) Involving conflicting national laws;

(*c*) Involving ambassadors, ministers, diplomatic agents or consuls;

(*d*) Between the nations, or between the League of Nations and one or more nations, or between individuals or corporations

of different nations; provided, in the last instance, that the amount involved exceeds a certain sum to be fixed by the body of delegates;

(*e*) Involving international transportation on the high seas or in the air.

The apportionment of original and appellate jurisdiction among the courts provided for by this article shall be determined by the Council and the Assembly.

The proceedings and records of the courts provided for by this article shall be public, except where such publicity is in the judgment of the court to which the case is presented, prejudicial to peace or order or to the maintenance of public morality.

The Council may be constituted a court of impeachment for the trial of any member of the Secretariat, or of the Council or of the Assembly or of any officer exercising the judicial power of the League, for dereliction of official duty, upon charges alleged by the Assembly, and the Council as a court of impeachment shall have exclusive jurisdiction over such cases.

Changes of this character were suggested in certain "Proposed Amendments to the Judiciary Articles of the Constitution of the League of Nations," which I took the liberty of submitting to the Commissioners at Paris while the matter was under consideration.

IV.

The Establishment of the New Court.

After the ratification of the Treaty of Versailles by a sufficient number of signatory powers to make it effective, and the organization of the Council of the League of Nations, the Council on Feb. 13, 1920, sent out an invitation to various eminent statesmen asking them to constitute themselves as an "Advisory Committee of Jurists" to formulate a definite plan for the establishment of a World Court, pursuant to this article of the Covenant of the League of Nations.

The jurists who accepted this invitation and who served on the Advisory Committee were as follows:

Elihu Root of the United States, with whom was associated James Brown Scott, Lord Phillimore of Great Britain, Albert de Lapradelle of France, B. C. J. Loder of The Netherlands, Arturo Ricci-Busatti of Italy, Mineichiro Adatci of Japan, Rafael Altamira of Spain, Clovis Bevilaqua of Brazil, for whom Rauol Fernandes was substituted for a portion of the time; Baron Descamps of Belgium, and Francis Hagerup of Norway.

This Advisory Committee met at The Hague on June 16, 1920, and immediately adopted as a working basis the prior efforts for

the establishment of a World Court at The Hague Conferences of 1899 and 1907. After numerous sessions, the Advisory Committee produced a "Project for a Permanent Court of International Justice" containing provisions setting forth its plan of organization and its powers.

The Advisory Committee recognized the limitations upon the judiciary system which the Covenant of the League of Nations unfortunately contained and sought to enlarge the powers of the Court even beyond the scope permitted by the Covenant. Both the Council and the Assembly of the League of Nations, however, made certain amendments to the project as reported by the Advisory Committee. The amendments restricted the powers of the Court to the scope provided by the Covenant of the League of Nations, but they opened the way for an enlargement of the Court's powers by providing that the nations may at their option confer obligatory jurisdiction upon the Court under certain conditions.

It seems probable that the Court under the present Covenant of the League of Nations will not be deemed to have power to set aside action by the Council or the Assembly of the League. It is unsafe, however, to make prophesies as to the jurisdiction which the Court may ultimately exercise.

Divisions of the Court.

Although the language of the Covenant of the League of Nations refers to a "court," and although its founders evidently intended that the court should act only in cases where nations are parties before it, the statute providing for its organization has already created several divisions of the court, one of which is to deal with "labor cases" and another of which is to deal with "cases relating to transit and communications," so that there may ultimately develop a complete system of international courts to meet the requirements of international controversies.

The project submitted by the Advisory Committee of Jurists, after having been modified by the Council on Oct. 27, 1920, and by the Assembly on Dec. 13, 1920, was then submitted to the members of the League for ratification.

More than the necessary majority of the forty-eight members of the League of Nations had ratified it by Sept. 1, 1921, and on Sept. 14, 1921, the Assembly and Council proceeded with the election of Judges in the manner which had been provided for in accordance with the suggestion of Mr. Root to the Advisory Committee.

The following eleven Judges were elected:

Señor Altamira (Spain).
Signor Anzilotti (Italy).
Dr. Ruy Barboza (Brazil).
Dr. de Bustamente (Cuba).
Lord Finlay (Great Britain).
Dr. Loder (Holland).
Dr. John Bassett Moore (America).
Dr. Oda (Japan).
M. Andre Weiss (France).
Dr. Max Huber (Switzerland), and
Dr. Nyholm (Denmark).

The following four persons were elected as Deputy Judges:

M. Negulesco (Rumania).
M. Jovanovitch (Jugoslavia).
Dr. Wang Chung-hui (China), and
Dr. Beichmann (Norway).

These gentlemen constitute the first members of the World Court, which held its opening session at The Hague on January 30, 1922.

Although the court and the judiciary system were given little consideration in the Versailles Conference, there is ample evidence in the debates in the Assembly of the League of Nations of the importance which the Assembly attributes to the court. Indeed, there is even evidence of fear that the remaining organization of the League may become little more than an electoral college to select the members of the court.

The organization of the Court has already necessitated important amendments to the Covenant of the League and additional changes should be made. Although it seems certain that before the United States will enter an association or league or federation of nations under any one supreme constitutional document, it will require that such a document shall be in complete accordance with American governmental ideals, there is almost universal approval in America of the establishment of the World Court and of the application of the principle of judicial settlement to international disputes.

The exact relations of the United States to the Court have been complicated by the manner of its organization. The solution of that problem, however, is not too great a problem for statesmanship of the future, and perhaps the present apparent dilemma may furnish an opening for the extension of American ideals even more completely throughout the world than now seems possible.